

3rd A 11/9

303015

4910-15-U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2004-19416-28

CGD05-04-151

RIN 1625-AA00

Safety Zone; All waters within the Captain of the Port
(COTP) Wilmington, North Carolina Area of Responsibility
(AOR) as defined by 33 CFR 3.25-20.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing all the waters within the Captain of the Port Wilmington, NC Area of Responsibility (AOR) in order to safeguard vessels, ports and waterfront facilities from damage due to Hurricane Charley. This rule prohibits vessels and people from entering the safety zone and requires vessels and persons in the safety zone to depart the zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port or his or her designated representative. This action is necessary to ensure public safety.

SEP 28 2004 11 31:55 T.T.

~~301~~

DATES: This rule is effective from 12:01 am EST on August 14, 2004 through 12:01am EST on August 21, 2004, or unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05-04-151 and are available for inspection or copying at the Marine Safety Office 721 Medical Center Drive, Suite 100, Wilmington, North Carolina 28401 between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Charles A. Roskam II, Chief Port Operations (910) 772-2200 or toll free (877) 229-0770.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to minimize deaths, injuries and damage during the storm.

Background and Purpose

The anticipated arrival of Hurricane Charley, predicted to reach all the waters within the Captain of the Port Wilmington zone as defined by 33 CFR 3.25-20 within the next 24 hours makes this safety zone necessary. Hurricane Charley's strongest winds will exceed 70 miles per hour. In order to adequately address the safety of the port, all commercial vessels and barges greater than 500GT and all tank barges greater than 200GT desiring to remain in port must arrange safe mooring and shall complete and submit in writing within 24 hours to the Captain of the Port an application to remain in port for approval. Commercial vessels and barges over 500GT and tank barges over 200GT planning to depart the port must depart not later than 12 hours prior to the arrival of gale force winds at Frying Pan Shoals Light (LLNR 835). Vessels bound for these ports are advised to seek an alternative destination. This safety zone will help to prevent vessels from damaging waterfront facilities, bridges, marinas and themselves and also prevent the loss of life associated with vessel casualties.

Discussion of Rule

The Coast Guard is establishing a safety zone for all waters of the U.S. Inland Waters and Territorial Seas within the Captain of the Port Wilmington, NC AOR as defined by 33 CFR 3.25-20, in anticipation of the impending landfall of

Hurricane Charley. This safety zone is needed to minimize the potential for deaths, injuries and damage due to the expected high winds and tides caused by Hurricane Charley. Individuals or vessels will not be permitted to enter the zone and all vessel movement within the safety zone will be prohibited except as specifically authorized by the Captain of the Port or his or her designated representative. The Captain of the Port may announce via Marine Safety Radio Broadcast that this temporary rule will not be enforced in certain portions of the safety zone. This temporary rule is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small

entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor within the COTP Wilmington, NC AOR.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone will only be in effect for a short duration of time, and will be terminated as soon as the hurricane passes and the port is re-opened. Before the effective period, we will issue maritime advisories widely available to all mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will

affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under ADDRESSES.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or

risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities

unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05-151 to read as follow:
§165.T05-151 safety zone; All waters within the Captain of the Port Wilmington, NC Area of Responsibility as defined by 33 CFR 3.25-20.

(a) Safety zone. All the waters within the Captain of the Port Wilmington, NC AOR as defined by 33 CFR 3.25-20.

(b) Regulations.

(1) The general regulations contained in 33 CFR 165.23 apply to all persons and vessels in the safety zone, or approaching the safety zone.


(2) All persons and vessels in the safety zone shall comply with the instructions of the Coast Guard Captain of the Port or designated on-scene-

patrol personnel. These personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(3) Waivers. The COTP may waive any of the requirements of this rule for any person, vessel or class of vessel upon finding that circumstances are such that application of the safety zone is unnecessary for port safety.

(d) Effective dates. This rule is effective from 12:01 am EST on August 14, 2004 through 12:01am EST on August 21, 2004, or unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

Dated: *Aug 13, 2004*


BYRON L. BLACK
Commander, U.S. Coast Guard
Acting Captain of the Port
Wilmington, NC